

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SHANEL MONICA LOVE, R.N.
6560 Kenbridge Street
Elk Grove, CA 95758

Registered Nurse License No. 639708,

Respondent.

Case No. 2007-98

OAH No. N2006120664

DECISION AFTER NON-ADOPTION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on February 21, 2007.

Kent D. Harris, Deputy Attorney General, Licensing Section, Department of Justice, State of California, represented complainant Ruth Ann Terry, M.P.H., R.N.

Jeffrey S. Kravitz, Esq., represented Shanel Monica Love, R.N. (respondent).

Evidence was received and the matter deemed submitted on February 21, 2007.

On March 1, 2007, Administrative Law Judge Roman issued his Proposed Decision. On April 13, 2007, the Board issued its Notice of Nonadoption of the Proposed Decision. On May 10, 2007, the Board issued its Order Fixing Date for Submission of Written Argument. After review of the entire administrative record including the transcript and written argument from Respondent, the Board hereby renders its decision in this matter.

FACTUAL FINDINGS

1. Complainant Ruth Ann Terry, M.P.H., R.N., filed the Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing (the Board), State of California against respondent.

2. On May 26, 2004, respondent successfully completed her educational program requirements for licensure as a California registered nurse at Sacramento City College, in Sacramento, California.

3. On June 4, 2004, respondent and some of her classmates celebrated the completion of the educational program. Respondent, then 33 years old, admits having imbibed several drinks. She departed the celebratory party and was involved in a single vehicle accident when her vehicle struck a highway divider. Respondent was injured in the accident and taken to a hospital. Responding officers found respondent to be very inebriated and uncooperative. She refused to submit to a blood alcohol test. Her blood was drawn and tested at .22 percent blood alcohol content.

4. On July 7, 2004, the Board issued Registered Nurse License Number 639708 to respondent. It is in full force and effect.

5. On September 15, 2004, in the Superior Court of California, County of Sacramento, respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (b) (operating a motor vehicle while having a 0.08 percent or more, by weight, blood alcohol content), a misdemeanor, with enhancements for violating Vehicle Code section 23577 (refusing to submit to a chemical test), and Vehicle Code section 23578 (blood alcohol in excess of 0.20 percent or more). Respondent was sentenced to probation for three years and ordered, inter alia, to serve 4 days in the county jail, abstain from drinking and driving, and complete a first offender program.

6. Respondent has been employed at the University of California Davis Medical Center. Her employment commenced while she was a student nurse, and has continued following licensure as a nurse. She is highly regarded and has commenced a program toward a bachelor's degree in nursing at California State University, Sacramento.

Circumstances in Aggravation

7. Respondent engaged in conduct and suffered a conviction that posed a direct threat to human safety.

8. Respondent is presently on probation to the Superior Court.

Circumstances in Mitigation

9. Respondent, 36, has suffered no other convictions in her life.
10. Respondent readily acknowledges her sole conviction and its underlying circumstances. She comprehends the nexus between her conviction and her licensure.
11. Respondent credibly claims that her refusal and uncooperative conduct at the time of her errant conduct are uncharacteristic. Without seeking to excuse her behavior, she is aware that her ingestion of alcohol significantly impaired both her judgment and proper deportment.
12. Respondent has met all terms and conditions of her probation, including the payment of all fines and penalty assessments, and merely awaits the passage of time for the termination of her probation.
13. Respondent's clinical skills as a nurse are reputed and confirmed by professional supervisors, colleagues and friends. Each witness testified that they have never observed any symptoms involving respondent that would raise concern of impairment from any licit or illicit substance.
14. Respondent testified that she no longer drinks and drives.
15. Respondent enjoys her profession as a nurse. She provides nursing services to not only the University of California Davis Medical Center, but also Mercy San Juan in Sacramento. She is committed to both her profession and her family. She regrets the impact her conviction and singular lapse of judgment has had on both her family and profession.

Costs Findings

16. The Board has incurred costs of \$2,466.50 in the investigation, prosecution, and enforcement of this matter.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the license of respondent as a registered nurse for a criminal conviction substantially related to the qualifications, functions or duties of a registered nurse pursuant to Business and Professions Code section 2761, subdivision (f) as set forth in Findings 2 through 5.

2. Cause exists to revoke or suspend the license of respondent as a registered nurse for unprofessional conduct involving a conviction involving alcoholic beverages pursuant to Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (c) as set forth in Findings 2 through 5.

3. Cause exists to revoke or suspend the license of respondent as a registered nurse for unprofessional conduct involving danger or injury to self or others pursuant to Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b) as set forth in Findings 2 through 5.

4. The relatively recent case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth factors to be considered in determining the reasonableness of costs incurred by the Board. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. No evidence was presented that challenged the Board's incurred costs or respondent's ability to reimburse the Board.

Cause accordingly exists to order respondent to pay the sum of \$2,466.50 as and for reasonable costs incurred in the investigation, enforcement and prosecution of this matter pursuant to the provisions of Business and Professions Code section 125.3, and as set forth in Legal Conclusions 1 and 2, and each of them, and Finding 16.

5. The objective of a disciplinary proceeding is to protect the public and the licensed profession, maintain integrity and high standards, and preserve public confidence in Board licensure.¹ Respondent is a new Board licensee.

It is equally apparent that respondent has availed herself of the Superior Court's intervention, and relegated this singular instance of poor judgment to her past.

A key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from an errant practitioner.² To that end, the Board has articulated particular guidelines which are of significant value to the undersigned. Indeed, the preface to the Board's Recommended Guidelines for Disciplinary Orders and Conditions of Probation states: "In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders . . . for violations of the Nursing Practice Act." The Board has observed, "If, at the time of hearing, the Administrative

¹ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

² *Mephram v. State Bar* (1986) 42 Cal.3d 943, 948; see also *Fahmy, supra*.

Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors the outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended.” It is not entirely clear if at this point in time respondent is capable of practicing safely. Therefore, it is necessary for Respondent to undergo a chemical dependency assessment to determine if she has a chemical dependency problem that may impair her ability to practice nursing safely.

Mindful that the primary focus of this tribunal is, as observed by the appellate court in *Fahmy, supra* at p. 817, to “afford protection to the public”; and mindful of the facts and circumstances underlying the accusation (Legal Conclusions 1 through 3, and each of them), and the circumstances in mitigation (Findings 6, and 9 through 15) and aggravation (Findings 7 and 8) the public interest will not be harmed by the continued issuance of a properly conditioned license to respondent.

ORDER

Registered Nurse License No. 639708 issued to respondent Shanel Monica Love, R.N., is revoked. However, said revocation is stayed and Respondent’s license is placed on probation for a period of two (2) years on the following terms and conditions:

1. Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Should respondent be under a criminal court order, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent’s compliance with the Board’s Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension. Upon successful completion of probation, respondent’s license shall be fully restored.

3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state. Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives. Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

6. Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse. The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board. Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement or

continuation of any nursing or other health care related employment. In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$2,466.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

9. If respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed suspension of the respondent's license. If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

10. During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation. Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- A. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- B. One year for a license surrendered for a mental or physical illness.

11. Respondent, at her expense, shall within 45 days of the effective date of this decision, have a chemical dependency assessment examination to determine if she is currently chemically dependent on drugs or alcohol. Respondent shall submit to the Board the name of the health care professional who she proposes to perform the assessment. The Board will notify Respondent in writing if it is in agreement with her choice. Respondent is responsible for the evaluator providing his or her report directly to the Board. If the evaluator determines that Respondent does not have a chemical dependency problem, she is not subject to probation conditions No. 12, 13, and 14 below (biological fluid testing and abstinence.) If the evaluator determines that Respondent does have a chemical dependency problem, she is subject to probation conditions 12, 13, and 14.

12. Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

13. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

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14. In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

15. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

This Decision shall become effective on September 7, 2007

IT IS SO ORDERED this 8th day of August 2007.


LAFRANCINE TATE
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-98

13 **SHANEL MONICA LOVE**
6560 Kenbridge Street
14 Elk Grove, California 95758

ACCUSATION

15 Registered Nurse License No. 639708

16 Respondent.



17 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
21 Affairs.

22 **Registered Nurse License**

23 2. On or about July 7, 2004, the Board issued Registered Nurse License
24 Number 639708 ("license") to Shanel Monica Love ("Respondent"). The license will expire on
25 November 30, 2007, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Section 2750 of the Business and Professions Code ("Code") provides, in
28 pertinent part, that the Board may discipline any licensee, including a licensee holding a

1 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
2 section 2750) of the Nursing Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a
4 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
5 against the licensee or to render a decision imposing discipline on the license. Under Code
6 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
7 years after the expiration.

8 5. Code section 2761 states, in pertinent part:

9 The board may take disciplinary action against a certified or licensed nurse
10 or deny an application for a certificate or license for any of the following:

11 (a) Unprofessional conduct, which includes, but is not limited to, the
12 following:

13 (f) Conviction of a felony or of any offense substantially related to the
14 qualifications, functions, and duties of a registered nurse, in which event the
15 record of the conviction shall be conclusive evidence thereof.

16 6. Code section 2762 states, in pertinent part:

17 In addition to other acts constituting unprofessional conduct within the
18 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
19 for a person licensed under this chapter to do any of the following:

20 (b) Use any controlled substance as defined in Division 10 (commencing
21 with Section 11000) of the Health and Safety Code, or any dangerous drug or
22 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
23 or in a manner dangerous or injurious to himself or herself, any other person, or
24 the public or to the extent that such use impairs his or her ability to conduct with
25 safety to the public the practice authorized by his or her license.

26 (c) Be convicted of a criminal offense involving the prescription,
27 consumption, or self-administration of any of the substances described in
28 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

24 COST RECOVERY

25 7. Code section 125.3 provides, in pertinent part, that the Board may request
26 the administrative law judge to direct a licensee found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 8. Respondent is subject to discipline under Code section 2761, subdivision
4 (f), in that on September 15, 2004, in the Superior Court, County of Sacramento, in the case
5 entitled *People of the State of California vs. Shanel Monica Love*, (Super. Ct., 2004, Case No.
6 04T04106), Respondent was convicted by the court on her plea of guilty of violating Vehicle
7 Code section 23152, subdivision (b) (willfully and unlawfully, while having a 0.08% and more,
8 by weight, of alcohol in her blood, drive a vehicle), a misdemeanor. Said conviction included an
9 admonition of Vehicle Code section 23577 (willfully refused to submit to and willfully failed to
10 complete, the chemical tests required pursuant to Vehicle Code section 23612) and Vehicle Code
11 section 23577 (willfully and unlawfully drive a motor vehicle with a concentration of alcohol in
12 her blood of 0.20% or more by weight, within the meaning of Vehicle Code section 23578).
13 Such conduct is substantially related to the qualifications, functions, and duties of a registered
14 nurse.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Conviction of a Crime Involving the Consumption of Alcohol)**

17 9. Respondent is subject to discipline under Code section 2761, subdivision
18 (a), on the grounds of unprofessional conduct as defined in section 2762, subdivision (c), of that
19 Code, in that on or about September 15, 2004, Respondent was convicted of a crime involving
20 alcoholic beverages, as more particularly set forth in paragraph 8, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious)**

23 10. Respondent is subject to discipline under Code section 2761, subdivision
24 (a) on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in
25 that on June 4, 2004, Respondent used alcoholic beverages to an extent, or in a manner
26 dangerous or injurious to herself or others, as more particularly set forth in paragraph 8, above.

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1 **PRAYER**


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 639708, issued
5 to Shanel Monica Love;

6 2. Ordering Shanel Monica Love to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
8 125.3; and,

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 10/12/06

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12 
13 RUTH ANN TERRY, M.P.H., R.N.
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant
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